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E-Filed 2-25-12

7 UNITED STATES BANKRUPTCY COURT  
8 DISTRICT OF NEVADA

9 In re:

Case No. BK-S-11-10391-BAM  
Chapter 11

10 JOHN E. HARNEY, IV. and AIMEE M.  
11 HARNEY,

Date: February 28, 2012  
Time: 9:00 a.m.

12 Debtors.

13 **OPPOSITION TO CONFIRMATION OF FIRST AMENDED PLAN**

14 Martin Keough ("Keough"), by and through his counsel of record Ty E. Kehoe, Esq.,  
15 hereby files this Opposition to Confirmation of First Amended Plan.

16 This Pleading is based upon the Points and Authorities attached hereto, the papers and  
17 pleadings on file in this action and any oral testimony and evidence to be presented at the time  
18 of the hearing, and the Opposition to Plan Confirmation filed herein on November 1, 2011  
19 which is fully incorporated herein.  
20

21 Dated this 25<sup>th</sup> day of February, 2012.

KEHOE & ASSOCIATES

22 

23 Ty E. Kehoe, Esq.

24 **SUMMARY OF ISSUES**

25 1 – Debtor filed bankruptcy on January 11, 2011, and has enjoyed the benefit of the automatic  
26 stay since that time, while essentially paying none of his creditors.  
27

1 2 – Keough opposed Debtor’s Original Plan on November 1, 2011, and Debtor has failed to  
2 ever respond to a single point raised in that Opposition, either formally through a pleading, or  
3 informally through a letter. A couple of limited and short telephone calls have only tangentially  
4 addressed some of the issues.

5  
6 3 – Debtor filed the First Amended Plan herein earlier today, on February 25, 2012, only one  
7 business day before the date set for plan confirmation.

8 4 – The last month for which Debtor has filed an operating report is November 2011.

9 5 – Debtor’s November operating report “Summary of Financial Status” “Cash Balance End of  
10 Month” indicates a cumulative cash balance of \$10,337. However, the two bank statements  
11 attached to the operating report indicate that one bank account has \$1,511.81, and one has  
12 \$1,408.00. Keough is unclear where the remaining \$7,000 is located.<sup>1</sup>

13  
14 6 – Debtor’s November operating report evidences ATM withdrawals totaling approximately  
15 \$800. There is no explanation provided for the use of this cash in November.

16 7 – Debtor’s November operating report evidences hotel stays in American Fork, UT, Cedar  
17 City UT, and appears to show a purchase at a movie theater in Chicago, IL. Keough is unaware  
18 of how these trips could be work related, and suggests that such trips might not be appropriate  
19 while Debtor has been in bankruptcy for thirteen months not paying creditors.  
20

21 8 – Debtor’s November operating report evidences a single purchase at In-N-Out Burger  
22 totaling \$84.97. This amount seems extravagant for a family of 4, including two little ones,  
23 while in bankruptcy for thirteen months not paying creditors.  
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28 <sup>1</sup> It is believed that Debtor has not made any of his mortgage payments, on either his primary residence, or his investment property, during the bankruptcy, and yet he still has only about \$3,000 excess funds in the bank.

1 9 – Debtor has collected \$1,000 per month from tenants in their investment property during this  
2 bankruptcy, while never providing a penny to Keough who holds the first and only mortgage on  
3 the investment property, and who has not been paid a penny since February 2009.

4 10 – In spite of Debtor collecting the rents from the tenants, Debtor has failed to pay the real  
5 property taxes on the investment property.

6 11 – In spite of Debtor collecting the rents from the tenants, upon information and belief,  
7 Debtor has permitted the insurance on the investment property to lapse.

8 12 – Debtor has transferred \$500 from the tenant's rents to the co-owner of the investment  
9 property. This has been done throughout the bankruptcy, without first paying the expenses of  
10 the investment property, and upon information and belief without court permission. It is  
11 unknown whether such splitting of tenant's rents occurred prior to the bankruptcy, or whether  
12 there is any contractual basis between the co-owners for such action. The co-owner of the  
13 investment property is also not paying Keough.

14 13 – Debtor's First Amended Plan proposes no distribution to Keough for Keough's unsecured  
15 claim which totals approximately \$170,000 pursuant to Debtor's bankruptcy filings.

16 14 – Debtor's First Amended Plan specifically does not bind John Barrier, the co-owner of the  
17 investment property, even though Barrier is listed as a co-debtor in the bankruptcy.

18 15 – Debtor's First Amended Plan does not address repayment of the rental income collected  
19 from the investment property during the course of the bankruptcy.

20 16 – Debtor's First Amended Plan does not address payment of the real property taxes which  
21 are unpaid on the investment property.<sup>2</sup>

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28 <sup>2</sup> Clark County is the current, temporary, owner of the property due to the non-payment of property taxes. This is one of many relevant facts that the Debtor has failed to disclose during the course of this bankruptcy.

**CONCLUSION**

For all of the above reasons, along with the reasons included in Keough's November 1, 2011 Objection to Plan Confirmation, Keough objects to confirmation of Debtor's First Amended Plan.

Dated this 25<sup>th</sup> day of February, 2012.


KEHOE & ASSOCIATES

  
Ty E. Kehoe, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of February, 2012, I served a true and correct copy of the Opposition to Confirmation of First Amended Plan electronically to the following:

David A. Riggi, Esq.  Via Electronic Notice Counsel for Debtor	US Trustee – LV – 11  Via Electronic Notice	Kevin Hahn  Via Electronic Notice Counsel for JPMorgan Chase Bank, N.A.
Christopher M. Hunter  Via Electronic Notice Counsel for Federal National Mortgage Assoc.		

  
Ty E. Kehoe, Esq.